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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,163	11/13/2001	Hiroaki Takahata	Q66991	6425

7590

12/26/2002

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EXAMINER

RIBAR, TRAVIS B

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 12/26/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

mk-9

Office Action Summary

Application No.

09/987,163

Applicant(s)

TAKAHATA ET AL.

Examiner

Travis B Ribar

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The amendment filed November 18, 2002 necessitates the withdrawal of all rejections in the office action dated May 9, 2002.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winter ('061) in view of Charrier.

Winter ('061) relates to a multilayer film that is easily peelable and is used in food container applications as a peelable lid (column 15, line 45, meeting the respective restrictions in the applicant's claims 6 and 7). The multilayer film in Winter ('061) contains a sealing layer of a polyester resin (column 4, lines 55-57) that is adjacent to a layer of either EMA or EVA (column 9, lines 4-11), meeting the laminate structural requirements of claims 1, 3, and 4. The thickness requirements of claims 1 and 5 are also taught in the reference, where the thickness of the polyester sealing layer is shown to be 5 micrometers (example 2). Winter ('061) therefore meets those requirements of claims 1 and 3-7. Winter (061) does not, however, specify the amount of ethylene present in the EVA or EMA layer, as the applicant does in claim 1. The lack of such information in Winter ('061) indicates that EVA or EMA with wide-ranging contents of ethylene may be suitably used in the invention to bond the backing layer to the sealing layer.

Charrier discloses that commonly sold EVA copolymers contain 55-60% ethylene units. This falls within the range specified by the applicant in claim 2. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a commonly sold EVA polymer in the invention shown in Winter ('061). The motivation for doing so would be to suitably bond the backing layer in the film shown in Winter ('061) to the sealing layer. Therefore it would have been obvious to combine Charrier with Winter ('061) to obtain the invention as specified in claims 1 and 3-7.

4. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genske et al. in view of the combined teachings of Willham et al. and Charrier.

Genske et al. discloses a multilayer film suitable for use as lidstock in a food packaging application (column 1, lines 20-22, meeting claims 6 and 7). The multilayer film includes a sealing layer and an adjacent layer that can include EVA or EMA (column 6, lines 1-31). However, even though these aspects of claims 1, 3-4, and 6-7 are met by the reference, there is no indication that the sealing layer can comprise polyester or that the polyester layer should be of the thickness indicated by the applicant in claims 1 and 5. Genske also does not specify the amount of ethylene present in the EVA or EMA layer as the applicant does in claim 2. The lack of such information in Genske et al. indicates that EVA or EMA with wide-ranging contents of ethylene may be suitably used in the invention to bond the backing layer to the sealing layer.

Willham et al. claims a peelable sealing film (paragraph 7) in which the sealing layer is made from polyester (Willham et al., claim 1). The invention is easily applied to packaging applications (paragraph 34) and the sealing layer is present in the thickness specified by the applicant in claims 1 and 5 (paragraph 33). The advantage to using this composition for a sealing layer is that it adheres to a substrate at relatively low temperatures (paragraph 6).

Charrier discloses that commonly sold EVA copolymers contain 55-60% ethylene units. This falls within the range specified by the applicant in claim 1. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a commonly sold EVA polymer in the invention shown in Genske et al. The motivation for doing so would be to form a structure analogous to the one taught in Genske et al. Therefore it would have been obvious to combine Charrier with Genske et al. and Willham et al. to obtain that part of the invention as specified in claim 1.

At the time of the invention, it also would have been obvious to a person of ordinary skill in the art to use a polyester sealing layer in the invention shown in Genske et al. The motivation for doing so would be to provide a heat-sealing layer that was sealable at low temperatures. Therefore it would have been obvious to combine Willham et al. with Genske et al. and Charrier to obtain the invention as specified in claims 1 and 3-7.

5. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Genske et al. in view of the combined teachings of Winter ('061) and Charrier.

Genske et al. discloses a multilayer film suitable for use as lidstock in a food packaging application (column 1, lines 20-22, meeting claims 6 and 7). The multilayer film includes a sealing layer and an adjacent layer that can include EVA or EMA (column 6, lines 1-31). However, even though these aspects of claims 1, 3-4, and 6-7 are met by the reference, there is no indication that the sealing layer can comprise polyester or that the polyester layer should be of the thickness indicated by the applicant in claims 1 and 5.

Winter ('061) discloses a sealing film made from polyester in the thickness claimed by the applicant in claims 1 and 5, as discussed above. The advantage to using the sealing layer of Winter ('061) is that the resulting film is suited for high temperature applications (column 5, lines 5-8).

Genske et al. also does not specify the amount of ethylene present in the EVA or EMA layer as the applicant does in claim 2. The lack of such information in Genske et al. indicates that EVA or EMA with wide-ranging contents of ethylene may be suitably used in the invention to bond the backing layer to the sealing layer.

Charrier discloses that commonly sold EVA copolymers contain 55-60% ethylene units. This falls within the range specified by the applicant in claim 1. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a commonly sold EVA polymer in the invention shown in Genske et al. The motivation for doing so would be to form a structure analogous to the one taught in Genske et al. Therefore it would have been obvious to combine Charrier with Genske et al. and Winter ('061) to obtain that part of the invention as specified in claim 1.

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At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use a polyester sealing layer in the invention shown in Genske et al. The motivation for doing so would be to provide a multilayer sealing film that is suited for use at high temperatures. Therefore it would have been obvious to combine Winter ('061) with Genske et al. and Charrier to obtain the invention as specified in claims 1 and 3-7.

Response to Arguments

6. Applicant's arguments filed November 18, 2002 have been fully considered but they are not persuasive.

7. The applicant argues the relevance of Charrier, citing that the reference discloses that EVA is used for applications not related to the present invention, such as hose products, footwear, etc. The examiner respectfully disagrees with this assertion. The passage the applicant is referring to relates to CSPE rubber, not EVA, and is a continuation of the subject of the previous page of the reference, which the examiner has included for the applicant's convenience. Since these uses are not attributed to EVA by the reference, the applicant's position on the relevance of Charrier is not persuasive.

8. The applicant also argues the combination of Genske et al. with the other references used in the rejections, claiming that Genske et al. teaches away from the

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present invention because the sealing layer in Genske et al. must be a different composition from the present application. The examiner respectfully disagrees with this assertion, noting that Genske et al. does not require the composition of the sealing layer to be different from the applicant's (see column 3, lines 39-43), it only states that it may be the case in one embodiment and does not teach away from the invention in present application. The argument regarding the application of Genske et al. to the present application is therefore not persuasive.

9. Applicant's arguments with respect to the other references and rejections have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis B Ribar whose telephone number is (703) 305-3140. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

TBR
December 23, 2002

Travis B Ribar
Examiner
Art Unit 1711



James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700